

III. REMARKS

Claims 1-56 are pending in this application. By this amendment, claims 1, 21, 41 and 54-56 have been amended. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicants do not acquiesce in the correctness of the rejections and reserve the right to present specific arguments regarding any rejected claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the original claims in a subsequent patent application that claims priority to the instant application. Reconsideration in view of the following remarks is respectfully requested.

In the Office Action, claims 1-15, 19-35 and 39-56 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Agrawal *et al.* (U.S. Patent No. 6,606,661), hereafter “Agrawal” in view of Bondarenko *et al.* (U.S. Patent No. 6,389,028), hereafter “Bondarenko,” and further in view of Rumsewicz (U.S. Patent No. 6,832,255), hereafter Rumsewicz. Claims 16-18 and 36-38 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Agrawal in view of Bondarenko and Rumsewicz and further in view of Slotznick (U.S. Patent No. 6,011,537), hereafter “Slotznick.”

With regard to the 35 U.S.C. §103(a) rejection over Agrawal in view of Bondarenko and Rumsewicz, Applicants assert that the cited references do not teach each and every feature of the claimed invention. For example, with respect to independent claims 1, 21, and 55 and similarly claimed in claims 41, 54 and 56, Applicants submit that the cited references fail to teach or suggest, *inter alia*, determining whether the access level for said scarce resource is at a desired maximum, the desired maximum indicating a predetermined maximum number of users that it is desired be accessing the scarce resource. The Office equates the feature as previously claimed

with no socket being available without specifying how the unavailability is calculated. In contrast, the claimed invention includes “...determining whether the access level for said scarce resource is at a desired maximum, the desired maximum indicating a predetermined maximum number of users that it is desired be accessing the scarce resource.” Claim 1. As such, the desired maximum of the claimed invention is not a generic unavailability of sockets as in Agrawal, but rather a predetermined number of users that it is desired be accessing the scarce resource. Thus, the determining as included in the claimed invention is not taught or suggested by the unavailable socket of the cited references. Neither Bondarenko nor Rumsewicz cures this deficiency. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

With respect to dependent claims 20 and 40, Applicants respectfully submit that the cited references fail to teach or suggest responsive to determining that said access level is currently at a desired maximum, determining whether said scarce resource is able to accommodate immediate access by said late requester. The Office, in a previous rejection states that

The “desired maximum” claimed cannot be a true maximum otherwise the scarce resource would not be “able to accommodate immediate access by said late requester” because it would be impossible to grant access to a resource if the resource were operating at its maximum. Final Office Action, page 2.

To this extent, Applicants interpret the Office’s argument as being that the claimed invention would never be “able to accommodate immediate access by said late requester” if the desired maximum of the claimed invention were equal to the physical limit of the scarce resource to handle requesters. In response, Applicants submit that the desired maximum is never claimed as being the physical limit of the scarce resource but is rather a “desired” maximum, i.e., a maximum number of request that it is desired that the scarce resource process simultaneously. As such, the scarce resource may have a desired maximum number of requests and still be able to

accommodate a late requester. One example may be if one or more of the requests that are currently accessing the scarce resource are not using the maximum amount of processor resources, memory, etc. that may be set aside for each request.

The Office has also stated that

The ‘desired maximum’ can only be interpreted as [an] arbitrary value that is below the actual maximum capacity of the resource. So the processes as claimed for accommodating late and regular requests are the same because both processes check to see if the resource is available and if not queue the request.” Final Office Action, page 2.

Applicants disagree with the Office’s conclusion that having a desired maximum that is a so-called “arbitrary value that is below the actual maximum capacity of the resource” would lead to that processes for each being the same. For example, suppose the desired maximum for a scarce resource is set at 10, that there are 10 requests currently accessing the scarce resource, and that there are 5 requests currently enqueued. Further, suppose that two additional requests to use the scarce resource arrive, one “normal request” and one “late request.” The normal request would automatically be placed in the queue behind the 5 users currently in the queue because the access level is currently at the desired maximum, i.e., the number of requests accessing the scarce resource equals the desired maximum of 10. In contrast, the late request would be given immediate access ahead of those currently in the queue if it were determined that the scarce resource was able to accommodate the immediate access. Thus, the late requestor of the claimed invention would be granted immediate access even though the access level of the scarce resource was at the desired maximum. In this case, there would be 11 requests accessing the scarce resource, even though the desired maximum is 10. In such a scenario, two requests would have to terminate or otherwise cease accessing the scarce resource before a request from the queue would be granted access to the scarce resource. Thus, in contrast to the process of Bondarenko

that is the same in any case, the claimed invention uses a different determination for late requests than the determination that it uses for regular requests. To this extent, the determining step for a late request as included in the claimed invention is not equivalent to the functions of the queue in Bondarenko. Agrawal and Rumsewicz do not cure this deficiency. Accordingly, Applicants request withdrawal of this rejection.

With regard to the Office's other arguments regarding dependent claims, Applicants herein incorporate the arguments presented above with respect to independent claims listed above. In addition, Applicants submit that all dependant claims are allowable based on their own distinct features. However, for brevity, Applicants will forego addressing each of these rejections individually, but reserve the right to do so should it become necessary. Accordingly, Applicants respectfully request that the Office withdraw its rejection.

IV. CONCLUSION

In addition to the above arguments, Applicants submit that each of the pending claims is patentable for one or more additional unique features. To this extent, Applicants do not acquiesce to the Office's interpretation of the claimed subject matter or the references used in rejecting the claimed subject matter. Additionally, Applicants do not acquiesce to the Office's combinations and modifications of the various references or the motives cited for such combinations and modifications. These features and the appropriateness of the Office's combinations and modifications have not been separately addressed herein for brevity. However, Applicants reserve the right to present such arguments in a later response should one be necessary.

In light of the above, Applicants respectfully submit that all claims are in condition for allowance. Should the Examiner require anything further to place the application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the number listed below.

Respectfully submitted,



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Hunter E. Webb

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Hoffman, Warnick & D'Alessandro LLC
75 State Street, 14th Floor
Albany, New York 12207
(518) 449-0044
(518) 449-0047 (fax)

RAD/hew